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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,552	02/03/2004	Leonard Bell	ALXN-PO1-114	6183
28120	7590	08/10/2007	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			VANDERVEGT, FRANCOIS P	
		ART UNIT	PAPER NUMBER	
		1644		
		MAIL DATE	DELIVERY MODE	
		08/10/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/771,552	BELL ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	F. Pierre VanderVegt	1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 May 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-171 is/are pending in the application.
- 4a) Of the above claim(s) 1-108 and 121-171 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 109-120 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08).  
Paper No(s)/Mail Date 20070510.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

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## **DETAILED ACTION**

The instant application, filed on February 3, 2004, does not claim priority to any earlier application.

Claims 1-171 are currently pending.

### ***Election/Restrictions***

1. Applicant's election without traverse of Group VI, claims 109-120, in the reply filed on November 24, 2006 is acknowledged.

Claims 1-108 and 121-171 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 245, 2006.

Accordingly, claims 109-120 are the subject of examination in the present Office Action.

2. This application contains claims drawn to an invention nonelected without traverse in the reply filed on November 24, 2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

In view of Applicant's amendment filed May 10, 2007 no outstanding grounds of rejection are maintained.

The following new ground of rejection has been necessitated by Applicant's amendment.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 109-120 are rejected under 35 U.S.C. 102(b) as being anticipated by Alexion press release dated January 6, 2003 (CG on form PTO-1449 filed 5/10/2007).

The Alexion press release teaches the use of the anti-C5 antibody compound eculizumab (h5G1.1-scFv) for the treatment of subjects with paroxysmal nocturnal hemoglobinuria (see entire

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document). It is noted that h5G1.1-scFv is the same compound recited in claim 111. The Alexion press release is silent about the treatment of NO deficiency in paroxysmal nocturnal hemoglobinuria. However, because the compound used to treat paroxysmal nocturnal hemoglobinuria in the Alexion press release and the instantly claimed compound to treat NO deficiency in paroxysmal nocturnal hemoglobinuria are the same, the treatment of NO deficiency in paroxysmal nocturnal hemoglobinuria would be an inherent property of the anti-C5 antibody compound eculizumab (h5G1.1-scFv). The prior art teaching anticipates the claimed invention.

Claims 112-114 are included because, while the references are silent about the proportion of type III red blood cells, silence about a particular property does not necessarily constitute absence of that property. Also, claims 115-117 are included because, while the references are silent about the platelet counts in a subject, silence about a particular property does not necessarily constitute absence of that property. Furthermore claims 118-120 are included because, while the references are silent about the reticulocyte counts in a subject, silence about a particular property does not necessarily constitute absence of that property. The office does not have the facilities and resources to provide the factual evidence needed in order to establish that there is a difference between the materials, i.e., that the claims are directed to new materials and that such a difference would have been considered unexpected by one of ordinary skill in the art, that is, the claimed subject matter, if new, is unobvious. In the absence of evidence to the contrary, the burden is on the Applicant to prove that the claimed materials are different from those taught by the prior art and to establish patentable differences. See *In re Best* 562F.2d 1252, 195 USPQ 430 (CCPA 1977) and *Ex parte Gray* 10 USPQ 2d 1922 (PTO Bd. Pat. App. & Int. 1989).

### ***Conclusion***

4. No claim is allowed.
5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

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is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Pierre VanderVegt whose telephone number is (571) 272-0852. The examiner can normally be reached on M-Th 6:30-4:00 and Alternate Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

F. Pierre VanderVegt, Ph.D. /PV/  
Patent Examiner  
August 6, 2007



DAVID A. SAUNDERS  
PRIMARY EXAMINER